

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: September 13, 2004

Case Number: TSO-0138

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter the individual) to hold an access authorization.¹ The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on testimony and other evidence presented in this proceeding, the individual should be granted access authorization. As discussed below, I find that the individual has not met his burden to bring forward sufficient evidence to show that access authorization should be granted.

I. History

This administrative review proceeding began with the issuance of a Notification Letter, informing the individual that information in the possession of the DOE created substantial doubt pertaining to his eligibility for an access authorization. In accordance with 10 C.F.R. § 710.21, the Notification Letter included a detailed statement of the derogatory information.

The area of concern cited in the Notification Letter involves information that the individual has demonstrated a pattern of unreliability and financial irresponsibility. This behavior is subject to the provisions of 10 C.F.R. § 710.8(1) (hereinafter Criterion L).²

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

²/ Derogatory information covered by Criterion L includes information that an individual has engaged in any unusual

The Notification Letter identified the following matters as concerns:

1. The individual failed to reveal three of four Article 15 military punishments in connection with his application for employment with the Bureau of Prisons in 1995, and falsely showed he had received an Associate of Arts (AA) degree from a community college. Due to these falsehoods, his employment with the Bureau of Prisons was terminated.

2. In applying for a position with the Immigration and Naturalization Service (INS), he falsely answered several questions on government forms, including information about why he was fired from the Bureau of Prisons. In this regard, in completing a June 1998 Questionnaire for National Security Position (QNSP) for the INS, he failed to truthfully supply information about his terminations from the Bureau of Prisons and from XXXXXXXXXXXXXXXX on August 12, 1997, and a behavioral treatment center on August 28, 1996. He reiterated false information about his degree from the community college and failed to show his past due child support.

3. In applying for a position as a security guard with another government institution in 1998, he again falsified information on application forms. He again failed to indicate four Article 15 disciplines, his termination from XXXXXXXXXXXXXXXX and the behavioral treatment center, and reiterated the false assertion regarding a degree from the community college.

4. He has failed to make child support payments beginning in 1997. As of March 2002, he owed approximately \$18,000 in child support.

5. In connection with a QNSP filed with the DOE in June 2002, the individual falsely answered in the negative a question as to whether he was ever debarred from government employment. The record indicates that the individual was debarred from appointment to any position in the competitive federal service for three years

conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reasons to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include. . . a pattern of financial irresponsibility

from July 1999 until July 2002. In connection with this same QNSP, the individual failed to show his termination from the behavioral treatment center.

6. According to a credit report dated February 11, 2004, the individual had a number of credit card accounts charged off as delinquent.

The above actions represent concerns about the individual's reliability under 10 C.F.R. § 710.8(1). Further, the items concerning falsehoods represent concerns under 10 C.F.R. § 710.8(f)(Criterion F).³

The Notification Letter informed the individual that he was entitled to a hearing before a Hearing Officer in order to respond to the information contained in that Letter. The individual requested a hearing, and that request was forwarded by the DOE Office to the Office of Hearings and Appeals (OHA). I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened. At the hearing, the DOE counsel called two security specialists to testify about the nature of the individual's behavior and why it creates a security concern. The individual also testified, but presented no witnesses.

II. Hearing Testimony

The first security specialist testified about the falsifications, omissions and financial concerns set forth in the Notification Letter. Transcript (hereinafter Tr.) at 8-39. This testimony provided detailed background as to the nature of the security concerns and pointed out the documentary support for those concerns. In essence, her testimony was that the individual in this case has demonstrated a pattern of falsification on federal government forms, as well as a pattern of financial irresponsibility. The second security specialist testified about

³ Derogatory information covered by Criterion F includes deliberately misrepresenting, falsifying or omitting significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization. . . .

the importance of truthfulness and reliability in individuals who are granted access authorization.

The individual testified about the matters raised in the Notification Letter. No purpose will be served here by discussing in detail every explanation that the individual has offered for his omissions and falsifications. Several examples will suffice. With respect to his failure to report on the 2002 QNSP filed with the DOE that he was debarred from federal employment for four years, the individual explained that he misunderstood the question. He further stated that he told an Office of Personnel Management (OPM) investigator about the disbarment, and that she must have failed to include it in her report. Tr. at 76, 80. With respect to the issue of arrears in child support payments, the individual stated that payments are now being deducted automatically from his salary, and that he is paying down the arrearage. Tr. at 98. With respect to his failure to reveal the four Article 15 disciplines, the individual stated that he was told only one would appear on his record, so that there would be no reason to acknowledge the three others. Tr. at 47, 50. The individual also challenges several of the charged off items on his credit report, stating that they are not his accounts.

III. Standard of Review

The Hearing Officer's role in these Part 710 proceedings is to provide the individual involved with an opportunity to furnish information to mitigate security concerns, to evaluate the information presented by the DOE Office and the individual, and to render an opinion based on that evidence.

The decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. See 10 C.F.R. § 710.7(a).

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not like a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we use a different standard, which is designed to protect national security interests. A hearing is for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization. 10 C.F.R. §710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that restoring his access

authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d).

This standard implies that there is a strong presumption against the granting or restoring of an access authorization. See Dept of Navy v. Egan, 484 U.S. 518, 531 (1988) (clearly consistent with the national interest standard for the granting of access authorizations indicates that security determinations should err, if they must, on the side of denials); Dorfmont v. Brown, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. Personnel Security Hearing (Case No. VSO-0002), 24 DOE ¶82,752 at 85,511 (1995).

IV. Analysis

I find that the Criteria L and F concerns have not been resolved. The individual's explanations do not mitigate a pattern of lying on federal forms that has lasted for nearly 10 years. I find quite serious the fact that the individual lied on his 2002 QNSP to the DOE. Especially troubling are the failure to reveal the disbarment from federal employment, and the fact that the application for the DOE employment was filed during the disbarment period. The individual has offered no meaningful explanation for this falsification, other than that he must have read the question incorrectly. That question stated: "To your knowledge, . . . have you ever been debarred from government employment?" QNSP, Question 26(b). The individual has not explained in what way he misunderstood this straightforward question. With respect to his failure in the past to make child support payments, the fact that he is now making regular payments is in his favor. However, the security concern relates to his failure to reveal the arrearage. With respect to the failure to reveal the credit card charges that were written off, the individual provided no information to convince me that the charges were not his. In any event, they should have been revealed on the QNSP with an explanation. Appearing in the 2002 QNSP, these falsifications and omissions are all relatively fresh.

In sum, the concern here is not so much that the individual has had some instances in the past involving questionable behavior. Rather, the security concern is this individual's ongoing pattern of shading the truth when it comes to fully revealing unflattering matters. This pattern continued into the year 2002, when the individual failed to make complete and truthful disclosures to the

DOE in his QNSP. Given this pattern, I cannot find that the security concerns regarding his truthfulness and reliability have been resolved.

V. Conclusion

As indicated by the foregoing, I find that individual has not resolved the Criteria F and L security concerns set forth in the Notification Letter. Accordingly, it is my determination that the individual should not be granted access authorization.

The individual may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Virginia A. Lipton
Hearing Officer
Office of Hearings and Appeals

Date: